

# Senate Study Bill 1284

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON JUDICIARY  
BILL BY CHAIRPERSON KREIMAN)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to indecent exposure and providing penalties.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
3 TLSB 2814SC 82  
4 eg/cf/24

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1 1 Section 1. Section 728.5, Code 2007, is amended to read as  
1 2 follows:  
1 3 728.5 PUBLIC INDECENT EXPOSURE IN CERTAIN ESTABLISHMENTS.  
1 4 1. An owner, manager, or person who exercises direct  
1 5 control over a place of business ~~required to obtain a sales~~  
1 6 ~~tax permit~~ shall be guilty of a serious misdemeanor under any  
1 7 ~~of the following circumstances described in subsection 2,~~  
1 8 ~~paragraphs "a" through "f", if the place of business is one of~~  
1 9 ~~the following:~~  
1 10 a. Required to obtain a sales tax permit.  
1 11 b. Allows an open or unsealed bottle, can, jar, or other  
1 12 receptacle containing an alcoholic beverage on the premises.  
1 13 c. Operates as a single place of business with an adjacent  
1 14 place of business required to obtain a sales tax permit.  
1 15 ~~1- 2. a.~~ If such person allows or permits the actual or  
1 16 simulated public performance of any sex act upon or in such  
1 17 place of business.  
1 18 ~~2- b.~~ If such person allows or permits the exposure of the  
1 19 genitals or buttocks or female breast of any person who acts  
1 20 as a waiter or waitress.  
1 21 ~~3- c.~~ If such person allows or permits the exposure of the  
1 22 genitals or female breast nipple of any person who acts as an  
1 23 entertainer, whether or not the owner of the place of business  
1 24 in which the activity is performed employs or pays any  
1 25 compensation to such person to perform such activity.  
1 26 ~~4- d.~~ If such person allows or permits any person to  
1 27 remain in or upon the place of business who exposes to public  
1 28 view the person's genitals, pubic hair, or anus.  
1 29 ~~5- e.~~ If such person advertises that any activity  
1 30 prohibited by this section is allowed or permitted in such  
1 31 place of business.  
1 32 ~~6- f.~~ If such person allows or permits a minor to engage  
1 33 in or otherwise perform in a live act intended to arouse or  
1 34 satisfy the sexual desires or appeal to the prurient interests  
1 35 of patrons. However, if such person allows or permits a minor  
2 1 to participate in any act included in ~~subsections 1 through 4~~  
2 2 ~~paragraphs "a" through "d",~~ the person shall be guilty of an  
2 3 aggravated misdemeanor.  
2 4 3. The provisions of this section shall not apply to a  
2 5 theater, concert hall, art center, museum, or similar  
2 6 establishment which is primarily devoted to the arts or  
2 7 theatrical performances and in which any of the circumstances  
2 8 contained in this section were permitted or allowed as part of  
2 9 such art exhibits or performances. At trial for a violation  
2 10 of this section the court may consider the challenged  
2 11 circumstance and whether the owner, manager, or person is  
2 12 attempting to evade prosecution under this section. In  
2 13 addition to other competent evidence, the court may consider  
2 14 testimony pertaining to:  
2 15 a. The artistic or theatrical value, if any, of the  
2 16 performance or exhibit.  
2 17 b. The degree of public acceptance within the community.  
2 18 c. The advertising promotion.  
2 19 d. The nexus, including the unity of interest, ownership,

2 20 management, and operations between the premises where the  
2 21 challenged circumstance occurred and an adjacent place of  
2 22 business.

2 23 Sec. 2. Section 728.8, Code 2007, is amended to read as  
2 24 follows:

2 25 728.8 SUSPENSION OF LICENSES OR PERMITS.

2 26 Any person who knowingly permits a violation of section  
2 27 728.2, 728.3, or 728.5, ~~subsection 6~~, to occur on premises  
2 28 under the person's control shall have all permits and licenses  
2 29 issued to the person under state or local law as a  
2 30 prerequisite for doing business on such premises revoked for a  
2 31 period of six months. The county attorney shall notify all  
2 32 agencies responsible for issuing licenses and permits of any  
2 33 conviction under section 728.2, 728.3, or 728.5, ~~subsection 6~~.

2 34 EXPLANATION

2 35 This bill relates to indecent exposure under Code section  
3 1 728.5.

3 2 Under current law, a person who exercises control over a  
3 3 place of business required to obtain a sales tax permit may be  
3 4 held accountable for circumstances of indecent exposure.

3 5 The bill provides that a person who exercises control over  
3 6 a place of business is guilty of a serious misdemeanor for  
3 7 circumstances of indecent exposure, if the place of business  
3 8 is one of the following:

3 9 1. Required to obtain a sales tax permit.

3 10 2. Allows an open or unsealed container of an alcoholic  
3 11 beverage on the premises.

3 12 3. Operates as a single place of business with an adjacent  
3 13 place of business required to obtain a sales tax permit.

3 14 The indecent exposure provisions do not apply to the arts  
3 15 or to theatrical performances. However, the bill provides  
3 16 that at a trial, the court may consider whether the person is  
3 17 attempting to avoid prosecution. The court may consider  
3 18 testimony pertaining to the nexus, including the unity of  
3 19 interest, ownership, management, and operations between the  
3 20 premises where the challenged circumstance occurred and an  
3 21 adjacent place of business.

3 22 A person who violates Code section 728.5 by allowing acts  
3 23 of indecent exposure performed by an adult is guilty of a  
3 24 serious misdemeanor and if such acts are performed by a minor,  
3 25 is guilty of an aggravated misdemeanor. A serious misdemeanor  
3 26 is punishable by confinement for no more than one year and a  
3 27 fine of at least \$315 but not more than \$1,875. An aggravated  
3 28 misdemeanor is punishable by confinement for no more than two  
3 29 years and a fine of at least \$625 but not more than \$6,250.

3 30 Upon a conviction, a person's license or permit required to  
3 31 do business on the premises shall be revoked for a period of  
3 32 six months.

3 33 LSB 2814SC 82

3 34 eg:rj/cf/24